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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.         | CONFIRMATION NO.       |
|---|-------------|-----------------------|-----------------------------|------------------------|
| 10/759,933  | 01/16/2004  | Johann Heinrich Cuhls | AUS920030598US1             | 8215                   |
| 32329   | 7590        | 05/07/2009            |                             |                        |
| IBM CORPORATION<br>INTELLECTUAL PROPERTY LAW<br>11501 BURNET ROAD<br>AUSTIN, TX 78758 |             |                       | EXAMINER<br>JOSEPH, TONYA S |                        |
|   |             |                       | ART UNIT<br>3628            | PAPER NUMBER           |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/759,933

**Applicant(s)**

CUHLS ET AL.

**Examiner**

TONYA JOSEPH

**Art Unit**

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/04/2009 has been entered.

### ***Status of Claims***

Claims 26-33 have been previously examined. Claim 26 has been amended. No claims have been cancelled. No claims have been added. Thus, claims 26-33 are again presented for examination.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 26-33 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 26-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

5. Claim 26 is directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process should either: (1) be tied

to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus the accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claim 26 identifies neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.

6. Claim 26 is directed to software. Claims directed to computer software not embodied on a computer readable medium purports to claim the software program itself. Software *per se* is not one of the recognized statutory classes of invention, as such, the claimed invention fails to meet the requirements under 35 U.S.C 101.

7. Claims 27-33 contain the same deficiencies through dependency and as such, are rejected for the same reasons.

#### ***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 26-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claim 26 recites the limitation "said position in said queue at which said patron is to be notified of a current position" in line 16. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 27 recites the limitation "said top position" in line 4. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 26 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waytena et al. U.S. Patent No. 5,978,770 A1 in view of Paxton et al. U.S. Pre-Grant Publication No. 20020007292 A1.

14. As per Claim 26, Waytena teaches receiving a queue entry request, wherein said queue entry request comprises patron-supplied personal contact information, wherein said queue entry request further comprises a position in said queue at which point a patron is to be notified (see Col. 13 lines 60-65) and a number of patrons in a party (see Col. 2 lines 53-65 and Col. 7 lines 1-30); placing said patron at a next available position in said queue (see Col. 3 lines 16-24); updating a position of said patron in said queue when another patron in said queue has been served (see Col. 3 lines 45-54); notifying

said patron, using said patron-supplied contact information, upon said patron reaching said position in said queue at which said patron is to be notified, of a current position of said patron in said queue (see Col. 18 lines 38-48); notifying said patron of an estimate time at which said patron will be served (see Col. 13 lines 29-32; 62-65). Waytena does not explicitly teach the limitation taught by Paxton selecting another patron to be served from said queue, wherein the another patron is selected based on position of the another patron in said queue and data provided in said queue entry request of the another patron (see para. 53 and 54). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Waytena to include the teachings of Paxton to advance customers in a queue.

15. As per Claim 31, Waytena in view of Paxton teaches the method of claim 26 as described above. Waytena does not explicitly teach the limitation taught by Paxton wherein said queue entry request is received via a web page (see para. 36). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the method of Waytena Deh-Lee to include the teachings of Paxton to enable request to be sent via web.

16. Claims 27, 29 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waytena et al. U.S. Patent No. 5,978,770A1 in view of Paxton et al. U.S. Pre-Grant Publication No. 20020007292 A1 in further view of Matsubayashi et al. U.S. Pre-Grant Publication No. 2003/0093670 A1.

17. As per Claim 27, Waytena in view of Paxton teaches the method of claim 26 as described above. Waytena further teaches notifying said patron, using said patron-

supplied contact information, upon said patron reaching said top position in said queue, that said patron is ready to be served (see Col. 12 lines 29-32). Waytena does not explicitly teach the limitation taught by Matsubayashi and starting a timer to count a first duration of time after said patron is notified that said patron is ready to be served (see para. 19 and 167). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Waytena and Paxton to include the teachings of Matsubayashi to allow a customer to determine if he wants to access a resource.

18. As per Claim 29, Waytena in view of Paxton in further view of Matsubayashi teaches the method of claim 27 as described above. Waytena does not explicitly teach the limitation taught by Matsubayashi placing said patron at an end of said queue if said patron does not respond to said notification that said patron is ready to be served prior to an expiration of said first duration of time (see para. 167 and 171). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Waytena, Paxton and Matsubayashi to further include the teachings of Matsubayashi to prevent idle time on queued resources.

19. As per Claim 32, Waytena in view of Paxton teaches the method of claim 26 as described above. Waytena further teaches wherein said patron represents a party of more than one person (see Col. 7 lines 9-14). Waytena does not explicitly teach the limitation taught by Matsubayashi wherein a position of said patron is swapped with a position of another patron if said patron's party cannot be accommodated (see para. 177). It would have been prima facie obvious to one of ordinary skill in the art at the time

of invention to modify the methods of Waytena and Paxton to further include the teachings of Matsubayashi to ensure proper seating allocation.

20. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waytena et al. U.S. Patent No. 5,978,770A1 in view of Paxton et al. U.S. Pre-Grant Publication No. 20020007292 A1 in further view of Matsubayashi et al. U.S. Pre-Grant Publication No. 2003/0093670 A1 and Deh-Lee U.S. Pre-Grant Publication No. 2005/0010357 A1.

21. As per Claim 28, Waytena in view of Paxton in further view of Matsubayashi teaches the method of claim 27 as described above. Although, Matsubayashi teaches de-queuing said patron from said queue if said patron is ready to be served prior to an expiration of said first duration of time (see para. 166-167 and 179, Examiner is interpreting a user that has been granted exclusive control, selecting a print option as a patron responding to a notification). Matsubayashi doesn't explicitly teach de-queuing in response to a patron responding, however, it is old and well known for patrons to respond to notifications and for service providers to act on their response. For Example, Deh-Lee teaches a customer being provided notification of a service provider's arrival and the subsequent re-scheduling of an appointment (see para. 13). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Waytena, Paxton and Matsubayashi to further include the teachings of Matsubayashi and Deh-Lee to advance a queue when a customer is being serviced.

22. Claims 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waytena et al. U.S. Patent No. 5,978,770A1 in view of Paxton et al. U.S. Pre-Grant



Publication No. 20020007292 A1 in further view of Piccionelli U.S. Pre-Grant

Publication No. 2002/0107965 A1.

23. As per Claim 31, Waytena in view of Paxton teaches the method of claim 26 as described above. Waytena does not explicitly teach the limitation taught by Piccionelli wherein said queue entry request is received via a electronic mail (see para. 28 and 30). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Waytena and Paxton to include the teachings of Piccionelli to allow patrons to submit request through varying channels.

24. Claims 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waytena et al. U.S. Patent No. 5,978,770A1 in view of Paxton et al. U.S. Pre-Grant Publication No. 20020007292 A1 in further view of Costantini et al. U.S. Patent No. 5,506,898.

25. As per Claim 33, Waytena in view of Paxton teaches the method of claim 26 as described above. Waytena does not explicitly teach the limitation taught by Costantini wherein said estimate time at which said patron will be served is determined based on a rate at which patrons have been served between a current time and a time of a last notification to said patron (see the Abstract of Costantini and Col. 5 lines 1-9). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Waytena and Paxton to further include the teachings of Costantini to provides up-to date wait time information.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TONYA JOSEPH whose telephone number is (571)270-1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tonya Joseph  
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